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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,331	02/12/2004	Peter Robert Abitz	75540-305884	1156
25764	7590	07/29/2005	EXAMINER	
FAEGRE & BENSON LLP PATENT DOCKETING 2200 WELLS FARGO CENTER MINNEAPOLIS, MN 55402			PALO, FRANCIS T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,331

Applicant(s)

ABITZ ET AL.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 20-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group-1 and the specie represented by claims 1-19 in the reply filed on 4/11/2005 is acknowledged.

Claims 20-54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/11/05.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.

Therefore, the **securement of the layers thus forming pockets as cited in claim-13, the pockets as cited in claim-14 and the pocket contents as cited in claim-15** must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended.

The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim-14 is objected to because of the following informalities:

In the claim, "second of said pocket" should be --second of said pockets--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Specifically, the claimed subject matter regarding the construction of the plurality of pockets and their contents is not adequately described in the specification nor depicted in the drawings to be examined on the merits. An attempt has been made to address claim-13 as Holloway depicts structure readable on a plurality of pockets; claims 14 and 15 are not examined on their merits as lacking in adequate disclosure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, 8-11, 13 and 16-19 are rejected under 35 U.S.C. 102(a),
as being anticipated by Holloway (US 6,681,521 B1).

Regarding independent **claim-1**:

An article comprising a base and cover layer having different weight and density is cited in the instant claim.

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Referring to the specification for clarification of the cited limitations "wood-derived cellulose fibers" (base layer) and "biodegradable natural fibers" (cover layer), in the last sentence on page-15 is disclosed; "tissue or towel will likely be used as the cover layer"... "and a porous heavier material such as an airlaid substrate will likely be used as the base layer".

Holloway teaches an article for use in growing vegetation comprising a perforated upper layer formed from a tissue paper having a weight of approximately 10-30 g/m² (abstract), and a perforated air-laid paper base layer having a weight of approximately 38-150 g/m² (column-4, lines 1-12).

Holloway thus teaches an article comprising a base and cover layer having different weight and density as cited in the instant claim, and as taught by an embodiment in the instant specification.

Holloway further teaches seeds disposed between the layers (column-10, lines 8-10) as cited, and that the layers are bonded together by means of an adhesive layer (column-10, lines 15-17) as cited.

Regarding claim-2:

As discussed above, Holloway teaches a tissue paper cover layer, which is read as "wood derived cellulose fibers" as cited in the instant claim.

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Regarding claim-3:

The claim is considered to read as a product-by-process claim, with no criticality or advantage drawn to the airlaid and wet laid products.

Holloway as discussed above teaches an air-laid base product as cited, but is silent as to a wet laid cover as cited. Holloway depicts in Figure-4 a process for making an article wherein the cover product is capable of being produced by a wet laid process as cited.

Regarding claim-4:

Holloway teaches pulp as a base layer material (column-4, lines 1-6) as cited.

Regarding claim-5:

Holloway teaches newsprint as a base layer material (column-4, lines 16-18) as cited.

Regarding claim-6:

Holloway teaches a biodegradable adhesive (column-3, lines 66-67) as cited.

Regarding claim-8:

The article of Holloway comprising paper layers is regarded as biodegradable as cited.

Regarding claim-9:

Depicted in Figure-2 of Holloway is structure readable as "a space between....", as cited.

Regarding **claim-10**:

Holloway teaches "pesticide/micro-nutrient treated seed can be used" (column-5, lines 65-66) as cited.

Regarding **claim-11**:

Holloway teaches fertilizer and micronutrients can be incorporated with the adhesive or applied to one or other of the internal surfaces (column-5, lines 10-13) as cited.

Regarding **claim-13**:

Holloway depicts in Figure-2 a cover layer secured to a base layer such that pockets are produced as cited, said pockets containing the seeds.

Regarding **claims 16-18**:

As discussed above in the rejection of claim-1, Holloway teaches a cover layer having a basis weight of 10-30 g/m² and a base layer of 38-150g/m²; the base layer of Holloway is within the range cited in the instant claim and the cover layer of Holloway overlaps the range cited in the instant claim.

Furthermore, the weights cited in the instant claims 17 and 18 likewise overlap with the teachings of Holloway.

Regarding **claim-19**:

Whereas Holloway is silent as to wet density of the layers, the article of Holloway is capable of the cited densities, as Holloway teaches the same layer material and weights as cited in the instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim-7 is rejected under 35 U.S.C. 103(a) as being unpatentable over
Holloway (US 6,681,521 B1).

Regarding **claim-7**:

Holloway is silent as to the use of jute fibers specifically as cited.

Holloway teaches a biodegradable natural fiber cover layer, of which jute is readable as.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have substituted jute as cited, for the tissue paper as taught by Holloway, as in the absence of any criticality as claimed, further such modification is merely an alternate equivalent biodegradable natural fiber layer performing the same intended function of serving as a cover layer.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

DE 1,566,161, AU 197581394A1, US 5,073,401 and US 5,417,010 teach articles readable on the instant independent claim.

US 4,414,776 teaches an article with layers reversed to the claimed invention.

GB 2,270,453A teaches an article having perforations therethrough.

US 526,512 and US 2,309,702 teach articles having a plurality of pockets for seeds.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 800-786-9199 (toll-free).

Francis T. Palo
Francis T. Palo
Examiner
Art Unit 3644